IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Cr.A.No.576/2000.

Date of Decision :14th November, 2007.

State of H.P. …Appellant.

Versus:

Om Parkash …Respondent.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for judgment?[1]

For the appellant: Mr. Ashok Chaudhary, Addl. Advocate General. .

For Respondent. Mr.Ajay Kochar, Advocate.

Sanjay Karol, J.

The present appeal arises out of the judgment dated 12th May, 2000 passed by Sub Divisional Judicial Magistrate, Rampur Bushahr Shimla, H.P. in Criminal Case No.127-3 of 1999 titled as State of H.P. Vs. Om Parkash acquitting the accused of the charged offence under Section 33 of the Indian Forest Act.(hereinafter referrd to as the Act).

A complaint Ext.PW-4/B was filed by the Range Forest Officer, Kumarsain Range in the Court of Additional Chief Judicial Magistrate, Rampur Bushahr, District Shimla alleging that seven trees (class-I, one tree and class-V, six trees) were found by Daulat Ram-Forest Guard to have been

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

illicitly felled from Un-demarcated Protected Forest (UPF), Tipper which fell within his jurisdiction. The damage report Ext.PW-1/A was prepared and the accused refused to sign the same for having admitted the guilt. Cognizance of the complaint was taken and notice of accusation was put to the accused for the commission of an offence under Section 33 of the Indian Forest Act. The accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined as many as six witnesses and the statement of the accused under Section 313 Cr.P.C. was also recorded. As per the defence of the accused he had made a complaint against the forest guard and therefore has been falsely implicated in the present case.

The court below acquitted the accused for the reason that there was no eye witness who had seen the accused felling the trees; the seizure memo was not prepared on the spot; as per the version of PW-2 the accused had only cut small branches of a fallen tree. The court further held that the damage report could not be proved by the prosecution as the attesting witnesses did not support the case of the prosecution.

Daulat Ram (PW-1), Chander Sain (PW-2), Sat Prakash (PW-3), P.S.Verma (PW-4), Bhagwan Dass (PW-5) and Jalmi Ram (PW-6) are the prosecution witnesses.

Damage report (Ext.PW-1/A) issued by PW-2 and

signed by PW. 2 and PW-3 was verified by PW-5. Sat Parkash (PW-3) has not supported the case of the prosecution as he was declared hostile and in his cross-examination nothing has come out which would show the complicity of the accused with the commission of the crime. The dame report is not proved. That apart there is no recovery of any property and nothing was seized or produced in the court. None of the witnesses have deposed that they saw the accused fell the trees in relation to which the damage report was prepared.

The complaint has been filed for violation of the provision of Section 33 of the Indian Forest Act, 1927 (hereinafter referred to as the Act). As per Section 30 the State Government is necessarily required to issue a notification declaring the protected forest area to be a reserved forest. In the present case two notifications issued by the Government dated 25th February, 1952 mark-A & B and another notification dated 13th November, 1963 mark-C have been placed on record by the Prosecuting Agency.The said notifications have not been proved in accordance with the provisions of Section 78 of the Indian Evidence Act. No doubt these notifications are public documents but none the less the same were required to be proved in accordance with the provisions of Section 78 of the Indian Evidence Act.

In *State of Himachal Pradesh Vs. Ami Chand* 1992 (2) Sim. L.C. 169, this Court has held as under:

> "No doubt, copy of notification has been produced but it has not been produced in accordance with law. Section 78 of the Evidence Act deals with proof of other official documents. There is no gainsaying the fact that notification of the State Government in any of its department is a public document and it can be proved by the production of the records of the department or if its copy duly certified by the Head of the Department accordingly is proved in evidence. In the instant case, neither the notification has been proved nor its duly certified copy as envisaged under Section 78 of the Evidence Act has been produced or proved on record."

It is not the case of the prosecution that the provisions of Sections 30 and 31 of the Act have been complied with. The notifications are neither certified nor proved by examining a competent person. They were simply tendered in evidence. Further, a careful perusal of the said notifications do not indicate that Tipper the forest in question from where the trees were allegedly felled had been notified as protected/reserved forest under the provisions of Sections 29,30 and 32 of the Act. The accused has been charged for an offence under Section 33 of the Act alone and in the absence of any proof with regard to the compliance of the provisions of Sections 28 to 30 of the Act no conviction under Section 33 of the Act can take place.

In view of the aforesaid observation, it cannot be said that the accused has violated the provisions of Section

33 of the Act. The court below has correctly appreciated the material on record and arrived at its conclusion. I see no reason to interfere with the same. The appeal is accordingly dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

November 14, 2007(R)